SUPREME COURT, U.S.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1955

No.

OLETA O'CONNOR YATES, HENRY STEINBERG, LORETTA STARVUS STACK, FRANK EFROIM SPECTOR, WILLIAM SCHNEIDERMAN, AL RICHMOND, ALBERT JASON LIMA, CARL RUDE LAMBERT, ROSE CHERNIN KUSNITZ, ERNEST OTTO FOX, BEN DOBBS, DOROTHY HEALEY CONNELLY, PHILIP MARSHALL CONNELLY and FRANK CARLSON,

Petitioners,

vs.

UNITED STATES OF AMERICA,

PETITION OF WILLIAM SCHNEIDERMAN FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

To the Honorable Earl Warren, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

William Schneiderman respectfully petitions that a writ of certiorari issue to review the judgment of the United

States Court of Appeals for the Ninth Circuit (Record p. 802) affirming the judgment of conviction herein of the District Court for the Southern District of California, Central Division.[1]

OPINIONS BELOW.

The opinions of the Courts below are noted in the Yates petition and joint appendix.

JURISDICTION.

The jurisdictional statement is the same as that in the Yates petition.

QUESTIONS PRESENTED.

1. On behalf of petitioner Schneiderman, the questions presented in the Yates petition numbered "1", "2", "3", "4", "5", "6", "7", "8" and "9" are adopted by reference here as if fully set forth at length, and made a part of this petition.

2. Whether as to petitioner Schneiderman the respondent was estopped to relitigate the following factual determinations previously and finally decided adversely to respondent in the litigation between respondent and

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[1]The separate petition of Yates et al. in the above-entitled matter, referred to herein as the "Yates petition", and the joint appendix thereto, sets forth matters equally applicable to all petitioners, including the petitioner Schneiderman. In order to avoid unnecessary duplication, such matters are adopted by reference as noted in this petition without further discussion.

petitioner in *Schneiderman v. United States* (320 U.S. 118): (a) that a tenable conclusion is that the principles of Marxism-Leninism do not include the duty and necessity of overthrowing and destroying the Government of the United States by force and violence; (b) that the advocacy and teaching by the Communist Party of the principles of Marxism-Leninism are not equivalent to the advocacy and teaching by the Party of the overthrow and destruction of the Government of the United States by force and violence; (c) that in and because of the absence of clear, convincing and unequivocal proof of overt acts indicating that petitioner interpreted the program of the Party unlawfully, the membership and officership of the petitioner in the Party, did not and do not justify inferences or permit findings that petitioner knew that the Communist Party advocated the forcible overthrow of the Government and intended to so teach and advocate with the intent to forcibly overthrow the Government at any time.

STATUTES INVOLVED.

The pertinent provisions of the statutes involved are set forth in the Yates petition and the joint appendix.

STATEMENT OF THE CASE.

So much of the Statement of the Case which appears in the Yates petition and is equally applicable to all petitioners is adopted here by reference and not repeated.

1. The petitioner here is the same petitioner who was before this Court in *Schneiderman v. United States*, 320 U.S. 118. That portion of the transcript of the record which included petitioner's own testimony in the District Court in December, 1939 in the aforesaid litigation was admitted into evidence in the instant case (Exhs. MM-1, MM-2; R. 1.1730-1).[2] The trial judge refused, however, to apply the principles of res judicata or collateral estoppel to any issue in the case, specifically excluding the entire question from the trial, a ruling which was upheld by the Court of Appeals (Appendix A, pp. 21-2),[3] The question was seasonably raised by motion before trial (Clk. R. p. 8 , by objections to the introduction of evidence (R. 516), by motions to rike evidence (R. 731; Clk. R. p. 177) and by requested instructions (App. Item 2q, p. 79),[4] The entire transcript of the record in the prior

[2]The exhibits admitted into evidence exceeded 500 in number and included many full length books. The Court of Appeals pursuant to stipulation of the parties and its order based thereon considered the exhibits on appeal in their original form without printing or reproduction. Copies of the Reporter's Transcript were prepared by a process known as photo offset printing and these copies were by order of the Court of Appeals accepted as the reporter's record on appeal without further printing. The letter "R" refers to the photo offset copies.

[3]That Court's opinion is set out as Appendix A to this and companion petitions herein.

[4]Each party filed printed appendices setting forth selected portions of the reporter's record. The appendix to appellants' brief was divided by subject matter into items with each item given a number. The appellants' appendix is referred to herein as "App. Item" followed by the number of the item and the page numbers in said appendix.

proceedings was offered into evidence and rejected (Exs. MM-1, MM-2; R. 11,937).[5] Also offered into evidence, and rejected, were the mandate of this Court dated July 20, 1943 (Ex. MM-3 for ident.; App. Item 105, pp. 391-3; R. 12529-30); the subsequent mandate of the Court of Appeals dated July 30, 1943 and the endorsement of the Clerk of the District Court indicating that the mandate had been filed and spread on the minutes of the District Court on August 30, 1943 (Ex. MM-4, App. Item 105, pp. 394-5; R. 12529-30), and the record of the District Court dated August 30, 1943 indicating the return to petitioner's counsel of petitioner's naturalization certificate theretofore surrendered in the action (Ex. MM-5, App. Item 105, p. 397; R. 12529-30).

In the trial herein, as in *Schneiderman*, one of the categories of proof adduced by respondent in support of the charge contained in the indictment was Marxist-Leninist literature. The theory of respondent was that a distillation of such writings by the trier of the facts would leave a residue of "principles", one of which principles was the overthrow and destruction of the present Government of the United States by force and violence. To support its premise that the literature was susceptible of this and no other interpretation, the respondent, as in *Schneiderman*, introduced into evidence certain documents considered basic in support of its position, and read excerpts therefrom. The basic documents were: (1) Constitution of the Communist Party of the United

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[5]The Court of Appeals stated that the record was not introduced into evidence (Appendix A, pp. 21-2). It was not introduced because an objection by respondent to its introduction was sustained (R. 11,937).

States (Ex. 5 in *Schneiderman;* Ex. 27 here); (2) 1928 Program of the Communist International (Ex. 6 in *Schneiderman*; Exs. 59 and 60 here); (3) Communist Manifesto (Ex. 7 in *Schneiderman*; Ex. 39 here); (4) State and Revolution, by V. I. Lenin (Ex. 8 in *Schneiderman;* Exs. 11 and 35 here); (5) Left-Wing Communism, by V. I. Lenin (Ex. 9 in *Schneiderman*; Ex. 503 here); (6) Program of the Young Communist International (Ex. 10 in *Schneiderman*; Ex. 133 here); (7) The Theory and Practice of Leninism, by J. Stalin (Ex. 11 in *Schneiderman*, appears to be substantially identical with "Foundations of Leninism", Exs. 1, 36 and 63 here); (8) Why Communism? by M. Olgin (Ex. 18 in *Schneiderman;* Ex. 62 here. After its admission here, it was ordered stricken by the trial judge). There were additional documents of a similar nature introduced in *Schneiderman* as there were here, but the aforementioned writings made up the core of respondent's evidence in each case. Respondent relied principally upon the same excerpts from the documents in evidence here as in *Schneiderman*, although again there were some excerpts added in *Schneiderman* and others assiduously added here.

The principles of the Communist Party condemning resort to force and violence enunciated in its written constitution were the same here as in *Schneiderman* (320 U.S. 118, 157, note 52):

> "Section 2. Adherence to or participation in the activities of any clique, group, circle, faction or party which conspires or acts to subvert, undermine, weaken or overthrow any or all institutions of American democracy, whereby the majority of the American people can maintain their right to determine their

destinies in any degree, shall be punished by immediate expulsion."

(1945 Const. Ex. 21, R. 5117.)

* * *

"Section 3. Any member shall be expelled from the Party who is found to be a strikebreaker, provocateur, engaged in espionage, or who advocates force and violence or terrorism, or who adheres to or participates in the activities of any group or party which conspires or acts to subvert, undermine, weaken or overthrow any or all institutions of American democracy through which the majority of the American people can maintain their right to determine their destinies."

* * *

"Section 9. Members are obligated to fight with all their strength against any and every effort, whether it comes from abroad or within our country, to destroy the rights of labor and the people, or to impose upon the United States the arbitrary will of any group or party or clique or conspiracy, thereby violating the unqualified right of the majority of the people to direct the destinies of our country."

(Added, 1948 convention. Ex. 153, R. 2089.)

It was apparently conceded in the trial below that the Party "ostensibly eschews resort to force and violence as an element of Party tactics" (320 U.S. at 157), for respondent itself introduced into evidence the 1938, 1945 and 1948 constitutions (Ex. 27, R. 571; Ex. 21, R. 1518; Ex. 153, R. 2089). Moreover, as in *Schneiderman*, there was undisputed evidence here that the Party has always publicly disclaimed that the use of force and violence was any part of the program or policy of the Party. In

1936, according to the record here, the Party stated: "The Communist Party declares that it does NOT advocate or condone the use of force and violence; on the contrary this is the method used by the enemies of labor, by provocateurs sent into the workers' ranks, by strike-breakers and vigilantes" (R. 1161). A pamphlet issued in 1947 denied that the Party's aim is the "violent overthrow of the American system", and set forth provisions of the constitution (quoted aforesaid) as the true statement of the Party's position (Ex. FG, R. 5121-25). Petitioner Yates appeared on behalf of the Party before a California legislative committee in 1949, and submitted a written statement which read: "The Communist Party denies the false assumption that it advocates force and violence, which is specifically prohibited in its Constitution" (Ex. KI, R. 10623). The study outlines used in the Party on the fundamentals of Marxism, reiterated the quotation from Lenin as contained in *Schneiderman*: "In order to obtain the power of state, the class conscious workers must win the majority to their side. . . . We are not Blanquists, we are not in favor of the seizure of power by a minority" (Ex. 626, R. 1435). Another outline stated: "Attitude of American Communist Party on force and violence defined in Constitution—advocates of force, violence or terrorism barred from membership" (Ex. 163, R. 3545). All of the aforesaid documents were introduced into evidence by respondent.

So far as petitioner's membership and the holding of office in the Party was concerned, respondent relied below upon petitioner's affiliations with the Party and predecessor organizations from 1922 to 1951, the time of the

indictment. Before the Court of Appeals respondent, in detailing the offices held by petitioner, stated (Resp. Br. p. 11): "Schneiderman testified in his 1939 evocation of citizenship that 'I was a delegate to the National Committee in 1934; and have been a member of the National Committee ever since' (Ex. MM-1, p. 96)." In its brief, respondent pointed to petitioner's testimony in *Schneiderman* to list the positions held by petitioner (See 320 U.S. 118, 126-7), and concluded: "From 1935 until the time of the trial Schneiderman under various titles continued as leader of District 13, C.P.U.S.A., or of the California District of the Party (Exs. 574, 572, 571, 566, 576, 562, 561, 569, 564, 623, 575, 538; A. 446-459),[6] being State Chairman of the Communist Party in California at the time he represented himself before the trial Court (R. 301)" (Resp. Br. id., pp. iii-iv). With respect to officership and membership in the Party, therefore, the evidence here and in *Schneiderman* was virtually the same, and indeed was introduced into this record as an integrated category of proof. The reason for this merger may be explained by the nature of the charge contained in this indictment and respondent's theory below. There was no proof that a conspiracy was formed as alleged on or about June 28, 1940, to commit the offenses alleged in the indictment; respondent's theory appeared to be that the "conspiracy" was formed when the Party was initially organized in the early 1900's and that petitioner wilfully and knowingly joined the alleged conspiracy when he joined the Communist Party at that time, knowing that the Party advocated and taught the doctrines of

[6]The letter "A" refers to the appendix to appellee's brief.

Marxism-Leninism. Thus, the same alleged unlawful knowledge and intent litigated in *Schneiderman* was relitigated here.

2. As in *Schneiderman*, there is nothing in the record here to indicate that petitioner has ever been arrested or subjected to censure, or ever connected with any overt, illegal or violent action or with any disturbance of any sort. As in *Schneiderman*, the record here shows, petitioner continuously denied the charge that petitioner or the Party advocated the forcible overthrow of the Government, or that the "'principles of Marxism-Leninism'' included such unlawful tenet. The evidence in both records on this aspect of petitioner's mental state was the same.

Thus, in 1939 petitioner testified in the Schneiderman proceedings as follows: From 1922 to 1939, in summary, the petitioner's "understanding and interpretation of the program, principles and practice of the Communist Party ever since I joined the Party were and are essentially the same as those enunciated in the present constitution of the Party'' (Exs. MM-1, MM-2, App. Item 99, p. 370). The petitioner stated that he had never considered binding upon him as a member and official of the Party "any doctrines which are in conflict with the principles enunciated in the Constitution of the Party" (id., p. 370). He stated that the Party had frequently been accused of advocating the forcible overthrow of the Government on the basis of quotations from "writings of a whole school of thought known as Marxism, Leninism, or Marxism-Leninism'' (id., p. 371). Petitioner stated that this was a misinterpretation and distortion of the position of the

Party and its members because the quotations were taken out of context, literally and historically; without regard "to the country or countries about which it was written"; without regard to the fact "that such writings or quotations are generally theoretical conclusions about general world affairs"; and that individual interpretations of an author or writer "may be and are at times in conflict with the principles and generally accepted practice of the Communist Party and its members, and these writings may distort the true position of the Party" (id, p. 371).

Moreover, stated petitioner, the application of the tenets of Marxism-Leninism must necessarily vary in each country in accordance with the specific national characteristics of that country and its own peculiar historical traditions and development. "Revolution cannot be imported to one country from another. Neither can it be imposed on any people or any country by the arbitrary will or advocacy or incitement of any group or party. The transformation of society from one stage to another has taken place in different ways in different countries within the general laws defining historical development. Its reorganization on a socialist basis will likewise have different characteristics, forms and methods within these general laws in each country in accordance with its own special characteristics. Any attempt to draw a mechanical comparison between America and other countries would be contrary to our whole method of Marxist-Leninist analysis" (id., pp. 372-3).

Petitioner stated that "the Communists do not desire the use of force and violence. We desire and strive for peaceful and democratic means of removing exploitation

and oppression" (Ex. MM-1, p. 373, R. 11926). Petitioner added that a study of history shows, however, that "no ruling class or dominant group has ever given up its privileges or its power without resistance by legal or illegal means, and by the use of force and violence against the majority even when that majority has come into power by peaceful and constitutional means" (id). Marxists do not say or believe or advocate, nevertheless, that "a social revolution could be brought about by any single group or party by a conspiracy or by in any way imposing the arbitrary will of any minority group or party upon a people or government" (App. Item 99, p. 373). The aim of the Party, stated petitioner, is to educate the people to an understanding of the nature of capitalist society and the experiences of history in all social, political and class struggles in order that the people may better understand how to defend their own interests, and on the basis of such learning and from their own experiences, to win the majority of the people to the principles of socialism (Ex. MM-1, p. 380, R. 11930). The petitioner, and the Party, desired and hoped that socialism could be achieved through peaceable and constitutional means (App. Item 99, p. 373). See also *Schneiderman v. United States*, 320 U.S. 118, 126-8.

From all of the aforesaid, it may be stated generally that in *Schneiderman*, petitioner affirmatively avowed that from 1922 to 1939 his own knowledge, understanding and intent were entirely lawful; that the term "revolution" meant to petitioner only a fundamental change in the class control of society and did not necessarily involve force and violence; that the Party desired to achieve

its program and policies by peaceful and democratic means; and that only as a theoretical matter based upon historical experiences in the past could it be predicted that force and violence might be used by those in power to thwart the majority will, or used by the majority after peaceful and constitutional accession to power to prevent a forcible counter-overthrow.

As the record here indicates, petitioner reaffirmed the same knowledge, understanding and intent in 1943 (R. 11726-33). In 1943, shortly after the argument before this Court in *Schneiderman*, petitioner suggested to petitioner Yates that she examine his testimony of 1939, that the testimony represented petitioner's "views on Marxism-Leninism" (R. 11729). Shortly after the decision of this Court in the same year, petitioner stated to petitioner Yates that "the majority opinion in the Supreme Court reflected fundamentally" the views which petitioner held with respect to the main teachings of Marxism-Leninism, "particularly on such questions as the possibilities for the working class peacefully to secure state power, the character and content of the dictatorship of the proletariat, and on the question of the position of the Communist Party" as expressed by petitioner "on force and violence" (R. 11732). Petitioner stated that he believed "the majority opinion did reflect and did state an accurate interpretation", as he understood it, "on those particular questions of Marxism-Leninism, including the question of force and violence" (R. 11732).

Again in 1951, after the case here had been initiated, petitioner suggested to petitioner Yates that she re-examine his testimony of 1939, that petitioner "believed

that the main issues were essentially the same as the issues in that case, and that the books and the material that was dealt with in the Schneiderman case was essentially the same as the books and material that was to be introduced in this case by the government" (R. 11733).

3. The "additional" testimony which respondent offered here came principally from the alleged recollections of paid F.B.I. informants and former members of the Party avowedly hostile to the Party and its membership. Petitioner held office in the Party in California according to the record for a period of about 20 years, during which period he was the focus of assiduous attention by governmental agents and informants. During this long period of carefully scrutinized activity by petitioner, there is no evidence in this record that he ever used a Marxist book unlawfully, or interpreted any excerpt in a Marxist book unlawfully, or otherwise. There is no evidence that petitioner ever expressly advocated the forcible overthrow of the Government, publicly or within the organization, and, as has been noted, there is no evidence that petitioner was ever connected with any overt illegal or violent action or with any disturbance of any sort. What evidence there is consists of some diverse incidents involving no more than the use of some equivocal language filtered through the deluding memory of some hostile and interested witness, which falls far short of clear, convincing and unequivocal proof that petitioner has at any time since *Schneiderman*, and contrary to his repeatedly expressed views in 1927, 1939, 1943 and 1951, adopted some reprehensible interpretation of the principles of Marxism-Leninism and the programs and policies of the Party.

For the convenience of this Court and for a proper evaluation of such evidence, petitioner has divided discussion of the evidence in choronological subdivisions. The first period, and perhaps the most crucial, is that period within the statute of limitations here, December 21, 1948, to December 21, 1951. The evidence indicated that petitioner was chairman of the Communist Party of California (R. 11229). He attended state and (San Francisco) county board meetings of the Party in 1948 and 1949 (R. 5446). In May, 1949, he delivered a talk "on behalf of the leaders of the Communist Party who were indicted in New York" (R. 1338, 1344). He may also have discussed peace, and may possibly have referred to the opinion of this Court in *Schneiderman*, perhaps stating that the Party did not advocate the forcible overthrow of the Government (R. 1688-90). In January, 1950, he attended and spoke at a Lenin Memorial meeting in Los Angeles, although what he said is not disclosed in the record (R. 8061-3). In January, 1951, he attended the East Bay Regional Convention of the Party, was introduced as the state chairman, and spoke (R. 3571). What he talked about is not revealed in the record. As was noted, it was in 1951 that petitioner again referred to his testimony in *Schneiderman* and stated his belief that the issues here were the same (R. 11733). That is all the so-called additional evidence in this record concerning petitioner's activities during the period covered by the statute of limitations, from December 21, 1948, to December 21, 1951.

The next period may appropriately be taken as covering the period outside the statute of limitations, begin-

ning with the reconstitution of the Communist Party, July 28, 1945, until December 21, 1948. The petitioner attended the national conventions of the Party in 1945 and 1948 (R. 2034), but there was no evidence as to what he said or did (R. 2034). At a second session of the 1945 state convention in California he "was barely re-elected State Organizer" (R. 455). He was in attendance at state conventions in August, 1945, both in Los Angeles and San Francisco (R. 4168). At San Francisco he said "we were going to carry on" the development of the Communist Party, and restore its theoretical foundations and axioms (R. 622). That petitioner continued to believe after the reconstitution of the Party, as he had previously reiterated in 1939 and 1943, that a social revolution was impossible without support of the majority will of the people, that it was a vulgarization of Marxist-Leninist doctrines to believe that social changes could be imposed arbitrarily by any minority group or party upon a people or a government, and that a proper historical and contextual study of Marxist-Leninist writings was essential to avoid all such distortions and misinterpretations was clear from the evidence adduced by respondent itself.

It was one of respondent's witnesses who testified that he left the Party because of his disagreement with petitioner; the witness insisted that petitioner's view of Marxism was at odds with the witness's view which latter view was "stand-up militantly as Communists until we got what we stood for and let the chips fall where they may on that" (R. 1079-80). The same witness for respondent testified the witness and the petitioner were in disagreement at the August, 1945, state

convention, each occupying a respective side of the convention which was "split down the middle". The segment of persons who sided with respondent's witness, as contrasted with the segment who sided with petitioner, felt that somebody was trying to control the Party, "sell us out in the interests of the foreign policy of the Soviet Union" by watering down the Party line, double talk, endless talk of united front. The witness's segment generally accused the petitioner's segment of watering down the version of Marx so it did not stand for the overthrow of the Government (R. 975-6).

Against these "leftists," petitioner appears to have carried on an unremitting struggle. In 1946, petitioner stated that the Party was "being reconstituted toward a purely Marxist-Leninist line," and was embarking on a purely Marxist role, "the playing of a revolutionary role in society" (R. 4375). Petitioner said then that the American people should avoid going through the experience of fascism that the German people had; that one reason for the rise of fascism in Germany was the failure to carry out a united front policy (R. 4669-71). In May or June, 1946, petitioner was present at a meeting where, following the presentation of charges and considerable debate, a group of "leftists" were expelled from the Party. The charges included opposition to the Party and petitioner as chairman of the Party in California upon the following grounds: the persons expelled were opposed to a program of coalition with progressive forces; they opposed a Party program for peace; they did not agree that a campaign for fair employment practices legislation was important; they were opposed to participation by the Party in election campaigns;

contrary to the views of the Party and those of petitioner and other officers, the "leftists" favored the extension of a machinists' strike to the waterfront, favored a general strike, and supported the view that strikes, whether won or lost, are always a gain for the working class, and opposed a settlement of the strike as the Party and petitioner urged; the "leftists" took the position that the immediate overthrow of the capitalistic system, without regard to first winning a majority to socialism, was the issue then facing the American people (R. 4456, 4674-4708). By an overwhelming vote, these "leftists" were expelled for their anti-Party activity (R. 4391).

Another of respondent's witnesses, a paid F.B.I. informant, testified that he was present in 1947 at a meeting at which petitioner allegedly spoke on left sectarianism and right deviations. The witness testified that while a member of the Party, he had previously been taught that a transition from capitalism to socialism would be "a drastic change," hence a revolution (R. 4913). The witness assertedly learned that part of the changing process would be violent because the minority would not permit the majority to effect such a change peacefully (R. 4912-13), that when the majority of the American people would exercise their free choice to establish socialism, the minority would not be willing to accept the wishes of the majority (R. 4902-03). It was this witness who allegedly recalled petitioner's remarks made in the meeting of 1947 on left-sectarianism.

Petitioner allegedly stated at the 1947 meeting, according to the witness, that the Party was still on the Marxist-Leninist line; that the expelled left sectarians were

like the horse that is too far ahead of the cart, that they were impatient, that they wanted the Party to embark on adventurous campaigns, that they criticized the Party for not being revolutionary. He assured the members that "we were", that before the revolution can be thought of the Party must first build a mass base among labor, farmers and minority groups, that revolution is a serious business and not something to shrug or laugh off, that it means tragedy and bloodshed and doubted if many Party members were ready for revolution; that it meant sacrifices, loss of property, loss of person, of life, but that these were expendable to achieve the goal of socialism; "but the Party was just not prepared for revolution and the majority of the members of the Party weren't conscious of the seriousness of it" (R. 4378-9). According to the extended recollection of the witness, petitioner expressed the opinion that the ultimate goal of socialism could only be accomplished through violence, that "the masters of finance capital would never give in without a fight" (R. 4380).

The same witness testified that petitioner criticized Browder for tying the Party to "the coat of the bourgeoisie", that Browder had anesthesized the revolutionary potential of the Party (R. 4381). However, another witness testified that there was a big discussion about removing petitioner from the Party because "he was a Browderite or something" (R. 6112).

Another of respondent's witnesses described a talk petitioner allegedly made at the Embassy Auditorium in Los Angeles in November, 1946, on U. S. foreign policy (R. 3885). Petitioner there stated that the United States

had better consider Communist successes in Yugoslavia, Czechoslovakia, China, Burma, France and the socialist gains in Britain, and think twice about what allies or aid it might get in case of war with the Soviet Union. He urged stopping aid to Chiang Kai-shek, demobilization of U.S. armed forces, removal of U.S. labels from relief goods, and adoption of Marxist training. It is alleged that he said free elections in this country can only serve the purposes of the fascists (R. 3889). In a long record liberally sprinkled with instances of participation in election campaigns by petitioner and others in the Party (R. 961-2, 1348, 1629-93, 5528-29; Exs. 579, 554, 542, 631, 632, 633, 634, 635, 519, 578; R. 4556-58, 4562-64, 4576-80; see also *Communist Party v. Peek*, 20 C. 2d 536, 127 P. 2d 889, 1942), this is the sole instance of anyone purportedly saying anything against the election process. Indeed, the same witness testified th. , although the Communist Party never supported a fascist for public office, it did support Franklin Roosevelt and Helen Gahagan Douglas (R. 4152-3), Sheridan Downey (R. 4161), Harry S. Truman (R. 4159) and other candidates on issues.

We have thus covered the evidence in the record involving the petitioner under the issues here in a period of over six years preceding the return of the indictment. The next period is the remainder of the time covered by the indictment, the period from the enactment of the Smith Act on June 28, 1940, to the reconstitution of the Party on July 28, 1945. In June, 1945, petitioner allegedly took part in a heated discussion at a meeting of the Seamen's Branch of the Party about Ex. 671, a discussion bulletin. He said allegedly "that we are

not giving up the revolution and dictatorship of the proletariat, we were going back to the fundamentals of Marxism-Leninism and Stalinism" (R. 611-12). At the San Francisco state convention in June, 1945, petitioner said so many comrades had got rid of their theoretical books, that "we were going back" to these and had to build libraries of Marxism-Leninism and Stalinism (R. 617-18). At the Los Angeles convention petitioner said he was sorry for his revisionist attitude and was willing to lead on to a more militant party (R. 3860). A speaker at that convention who arose to urge a revolution of the workers and the overthrow of the Government (R. 3858) was thereafter expelled from the Party for "left sectarianism" (R. 4273). At the San Francisco convention petitioner was elected delegate to the National Convention. Nominating him, one Nelson described two groups in the Party, one of which was composed of those who held jobs and devoted part time to Party activities, and the other of which consisted of those who gave their whole lives to building and developing the Party, what Lenin called professional revolutionists, "and we had people like Schneiderman" (R. 620).

In June, 1943, petitioner attended a conference in San Francisco originally called to select a successor for petitioner, who anticipated being drafted into the army. The conference followed by a few days the decision of this Court in *Schneiderman*. Petitioner described the decision as an important victory for citizenship rights and civil rights generally, said that it confirmed many of the teachings of the Party and positions which the Party had taken and said he believed the decision upheld his

own views of the teachings, activities and theories of the Party which he had given in the course of his own testimony in that proceeding (R. 10957-61). In July, 1943, petitioner spoke in Los Angeles together with William Z. Foster (R. 5590). An article on the 50th birthday of Earl Browder in a magazine "The Communist" for July, 1941 (Ex. 14), lists petitioner as its author (R. 5576). In October, 1940, petitioner had a conversation with a respondent's witness in which he allegedly said that the enactment of the Voorhees Act would not interfere with the Party continuing to aid workers in other countries (R. 679).

The aforesaid embraces the eleven-year period covered in the indictment. If evidence prior thereto is to be considered at all, the evidence here with respect to the period prior to the passage of the Smith Act emanated principally from one respondent's witness, Nat Honig, a notorious and peripatetic paid informant.[7]

Respondent's witness as aforesaid testified that petitioner was in Moscow from June, 1934, to September, 1935, as a representative from the American Communist Party to the Communist International (R. 7693-99), that at one meeting in mid-June, 1934, the chairman of the meeting said he had a report from the Communist Party

[7]The witness had testified in different Communist cases (R. 8116-7) in recent years. It was shown that he tailored his testimony in each case to fit the immediate purpose. Unwilling to admit serious discrepancies between his testimony in different proceedings, he sought to attribute the differences to errors in reporting. But these alleged errors were conclusively demonstrated to be nothing of the kind when the actual recordings of his prior testimony were played by soundscriber to the court and jury (Cf., R. 10771 with R. 8371, and R. 10776-7 with R. 8413).

that the situation on the San Francisco waterfront furnished the opportunity for a general strike; that petitioner agreed with the chairman's estimate that a general strike could be produced and that such a general strike would be an excellent rehearsal for seizure of power by the American Party. Petitioner allegedly agreed that instructions to bring about such a general strike should go to the American Party (R. 7706, 7718).

Actually, as the witness conceded on this record, the general strike of 1934 in San Francisco was under the direction of a special committee of the San Francisco Labor Council, A.F.L. Some of the committee members, none of them Communists, were: Edgar (sic) Vandeleur, George Kidwell, John O'Connell, Milton Maxwell and Charles Barry, Editor of the Labor Clarion, a newspaper (R. 8253-57). The longshoremen's strike in 1934 was exclusively concerned with improvements sought in the wages, hours and working conditions of the workers: union recognition, union control of hiring hall, a 6-hour day, a 30-hour week, $1.00 an hour straight time, $1.50 an hour for overtime, and fair working rules (R. 8237-38). In the very same period, a resolution adopted by the central committee of the Party, September 5-6, 1934 (Ex. 738), stated: "It was the capitalist class which, in panic before the rising giant of class action of the workers, hysterically cried out that this strike, which they could have settled very quickly at any time by the simple expedient of granting the workers' demands, was actually a revolutionary uprising organized by the Communist Party to overthrow the whole capitalist system. Of course, this strike did not have revolution as its objec-

tive, but only the immediate demands of the workers" (R. 8629).

Honig, the same witness, added that in 1936, he attended meetings in San Francisco where waterfront labor difficulties were discussed and that petitioner suggested that maybe the same situation as in 1934, a general strike could be brought about, reminding those present that as was said in the Comintern in 1934, such general strikes are rehearsals for seizure of power by the Party and the working class (R. 7725, 7730). But as the uncontradicted record showed, petitioner in a radio speech in September, 1936, as reported in the newspaper, Western Worker (Ex. 1, R. 8294), as a "part of the California program of the Communist Party in the 1936 election campaign," said of the waterfront labor difficulty: "The Communist Party declares that it does *not* advocate or condone the use of force and violence; on the contrary this is the method used by the enemies of labor, by provocateurs sent into the workers' ranks, by strikebreakers and vigilantes. The Communist Party is not interested in strikes for their own sake. We know full well how costly strikes are for the workers, and their families. In the present waterfront situation, we hope, as do all friends of labor, that the threat of a strike or lockout will be averted through negotiations and a peaceful settlement, which will take into consideration the just demands of the maritime unions" (R. 8161). The maritime unions sought repeatedly to avoid a strike (Ex. 1B, R. 8285), an attitude confirmed by a report of the Department of Labor on the maritime strike of 1936-7 (Ex. 1C, R. 8292). The same report emphasized that the strike was marked

by public debate in the press and radio, with the strikers cooperating "with the regular city policy to maintain order" (R. 8311). Honig himself was the managing editor of the Western Worker in 1936, allegedly Communist controlled, when editorials were noting that "the unions have done everything possible to settle the issue through peaceful negotiations, but the employers are forcing the struggle upon them" (R. 8295-6, 8302-4, Exs. ID, IE).

Honig also testified that in 1936, the then editor of the Western Worker, one Carlisle, was the subject of discussion at a meeting at which petitioner allegedly stated that Carlisle was being removed from his job because of his dilettante attitude, that this attitude was inconsistent with the ultimate aim of the Party which was to bring about a revolution in the United States and seizure of power by the Party. Petitioner allegedly said that "petty bourgeois elements on the staff" of the Western Worker should not forget that the united front against fascism was just a temporary tactic and that "we still had the ultimate aim of overthrow of the American bourgeois government" (R. 7732). Honig had testified prior hereto against Carlisle in a deportation proceeding, based on Carlisle's alleged membership in organization advocating the forcible overthrow of the government. Honig testified about the same event in 1936 concerning Carlisle's removal as editor, but he said nothing about Carlisle's dilettante attitude nor a program for seizure of power (R. 8386-93).

Honig in his testimony gave his own understanding and beliefs while a member of the Party on the question of accession to power of a socialist government. He

thought during his membership that there was a 75% or greater chance that when the American people reach the point of doing away with capitalism as a system, they could then be in such a great majority and indicate it so plainly that there would be no need for any kind of struggle or violence (R. 8544-49). Many Party leaders had told him this would be true (R. 8549). These beliefs represented what the witness desired, wished and hoped for, and what the same Party leaders preferred (R. 8544).

The remainder of this pre-Smith Act testimony was as follows: Petitioner gave some lectures at a 1937 State School of the Party (R. 463, 1011). Honig stated that petitioner gave some lectures at the Lenin Institute while in Moscow (R. 7719). There was no evidence as to the contents of these lectures. Petitioner in 1937, together with others, allegedly established the State school, approving generally the proposed outline for such a school and its financing (R. 480). In 1936, petitioner allegedly attended "underground" meetings in Los Angeles with several of his co-defendants, although the record does not show what took place at such meetings (R. 5976). Exhibits in evidence reflect judgments obtained from 1931 to 1933 in Los Angeles federal district, Superior and Municipal Courts, in actions for damages or injunctions against certain public officials, for unlawfully interfering with and breaking up political meetings held by Communists and others (Exs. FX (R. 5922); FY (R. 5955); FZ (R. 5955); GA (R. 5923); GB (R. 5958); and GC (R. 5922)). In 1937, petitioner criticized a "Trotskyite" article in the Western Worker (R. 447). In 1939 he stopped with a

Negro prosecution witness at a place where they were refused service; he allegedly told the witness he had no time to stop and file a suit and fight for Negro rights, that he had other things to do (R. 6018). In December, 1939, petitioner testified before the District Court in *Schneiderman.*

ARGUMENT.

The argument reasons relied on for allowing the Writ are in part the same as those recited in the Yates petition and they are not repeated here.

I

THE COURTS BELOW ERRED IN EXCLUDING THE QUESTIONS OF RES JUDICATA AND COLLATERAL ESTOPPEL FROM THE CASE MADE AGAINST PETITIONER AND IN PERMITTING RESPONDENT TO RELITIGATE FACTUAL DETERMINATIONS PREVIOUSLY AND FINALLY DECIDED ADVERSELY TO RESPONDENT IN THE LITIGATION BETWEEN RESPONDENT AND PETITIONER IN SCHNEIDERMAN. THERE WAS NO DIFFERENT AND ADDITIONAL TESTIMONY IN THIS RECORD SUFFICIENT TO SUSTAIN THE CONVICTION HERE OR TO AVOID THE CONCLUSIVE EFFECT OF THE JUDGMENT IN SCHNEIDERMAN.

1. This Court has stated that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground for relief or non-relief, cannot be disputed in subsequent litigation between the same parties; "and even if the second suit is for a different cause of action, the right, question or facts once so determined must, as between the same par-

ties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified." *Southern Pac. R. Co. v. United States*, 168 U.S. 1, 48-9. See, also, *Frank v. Mangum*, 237 U.S. 309; *United States v. Oppenheimer*, 242 U.S. 85; *Sealfon v. United States*, 332 U.S. 575; *United States v. Williams*, 341 U.S. 58; *Steele v. United States*, 267 U.S. 498, 505; *United States v. Adams*, 281 U.S. 202.

The scope of res judicata and collateral estoppel have been heretofore considered by this Court, and it has been held that the Government may not relitigate an issue heretofore litigated no matter in how many different forms it casts its cause of action. *Commissioner of Internal Revenue v. Sunnen*, 333 U.S. 591, 597-8. A determination in a criminal proceeding has been held to be a bar in a civil proceeding (*Coffey v. United States*, 116 U.S. 436); a determination in an admiralty proceeding a bar to a civil action (*Gelston v. Hoyt*, 3 Wheat. (U.S.) 246); a determination in an injunction suit a bar to an action for damages (*United States v. Munsingwear*, 340 U.S. 36). The same principles have been applied to the decisions of administrative tribunals. *L. & N. Ry. Co. v. Ohio Valley Tie. Co.*, 242 U.S. 288. The question in each case is, therefore, what issues have been determined, not what was the form of the action in which they were determined. *New Orleans v. Citizens Bank*, 167 U.S. 371 (1897). Especially is this true where, as here, the prior litigation sought consequences "more serious than a taking of one's property, or the imposition of a fine or other penalty" (*Schneiderman v. United States*, 320 U.S. 118, 122; Cf., *Coffey v. United States*, 116 U.S. 436 supra),

and where the standard of proof in such prior litigation was "substantially identical with that required in criminal cases—proof beyond a reasonable doubt" (*Klapprott v. United States*, 335 U.S. 601, 612). In the Court of Appeals here, it was held that there is no precedent to support the view that "a prior judgment in a cancellation of citizenship case estops the government or that the findings therein are res adjudicata against the government in a subsequent criminal case" (Appendix A, p. 22). In so deciding, the Court below decided the case contrary to applicable decisions of this Court as aforesaid.

2. In *Schneiderman*, the proceeding was commenced by the filing of a complaint in the District Court against the petitioner in which respondent sought petitioner's denaturalization pursuant to the applicable statutes upon the grounds that petitioner had procured the naturalization illegally and by fraud. The complaint charged (Par. IV, App. Item 100, p. 375) that petitioner "at the time of his naturalization" and "during the period of five years immediately preceding" was a member of and affiliated with and believed in the principles of the "Workers (Communist) Party of America," whose principles "advocated and taught the overthrow of the Government, Constitution and laws of the United States by force and violence." The complaint also charged (Par. V, App. Item 100, p. 376), "that at all times subsequent to the entry of said decree of naturalization," petitioner "continued to be, and now is, a member" of the named organizations with the same proscribed principles "and during all of said times respondent has continued to believe in and support said principles of said organizations."

To these allegations, petitioner made answer admitting the fact of his membership but denying that the Communist Party had any such principles as were alleged. Petitioner also filed a separate defense in which he specifically denied that the Party ever taught and advocated the overthrow of the Government of the United States by force and violence; in which he affirmatively alleged that the Party taught and advocated the defense of the democratic liberties of the American people and the defense of the United States Constitution; and petitioner affirmatively set forth the constitution of the Party to demonstrate its opposition to the use of force and violence (App. Item 101, p. 379).

At the trial in 1939, counsel for respondent stated that "we expect to show" that "prior to the filing of the declaration of intention by Mr. Schneiderman for citizenship and at the time of the filing of the declaration of intention and at the time of the filing of his petition for citizenship and at the time of his admission to the citizenship and up to the present time," petitioner advocated the proscribed doctrines and was a member of organizations with such unlawful tenets, and that petitioner believed in such doctrines (App. Item 102, p. 384). Voluminous testimony was then introduced on both sides, practically every bit of it going to the issues relating to the principles of Marxism-Leninism and their interpretation on the question of force and violence, the teaching and advocacy of such principles by the Communist Party, and the knowledge and intent of petitioner with relation thereto. We have recounted some of the documentary and oral evidence in the Statement of the Case here. See,

Transcript of Record, *Schneiderman v. United States*, this Court No. 2, Oct. Term 1942; Exs. MM-1, MM-2 in the instant case.

The written decision of the District Court (33 F. Supp. 512), in granting the petition and entering a decree revoking petitioner's citizenship, noted that "the government has placed in evidence many volumes of books and pamphlets which explain the doctrines of Marx, Engels, Lenin and Stalin, upon which the principles and practices of the Communist Party and its predecessor organizations are based"; that the government had "also called upon three witnesses, including defendant, to explain the position of the Communist Party and these predecessor organizations with respect to communist ends and means"; that "the court may note defendant's conduct, as outlined above, in order to throw light on his state of mind during the probationary period," and that "the conclusion which this court reaches" is that the organizations of which petitioner was a member sought to establish the "dictatorship of the proletariat" and that "methods of force and violence" are accepted and necessary for such attainment, and that the organizations to which petitioner belonged "taught and advocated the overthrow of the government by force and violence." In accordance with the views expressed in the aforesaid decision and respondent's theory of the case, the District Court made and entered findings of fact, specifically finding that petitioner "was a member of and affiliated with and believed in the principles of * * * the Communist Party of the United States of America * * * which organizations * * * advised, advocated and taught the overthrow of the

Government * * * of the United States by force and violence * * *"; that the petitioner "intended to adhere to and support and defend and advocate the principles and teachings * * * which * * * advised, advocated and taught the overthrow of the Government, Constitution and laws of the United States by force and violence" (App. Item 103, pp. 385-87).

On appeal to the Court of Appeals in *Schneiderman*, petitioner challenged the sufficiency of the evidence to support the findings of the District Court, alleging among other things, that the evidence did not establish "that either Respondent, or any organization with which he was associated, or of which he was a member, believed in the overthrow of the government by force or violence, or advocated or taught such principles" (App. Item 104, p. 388). The Appellate Court, observing that the issues were in sharp conflict, affirmed the judgment upon the ground that the findings "are not clearly erroneous." 119 F. 2d 500 (C.A. 9, 1941).

This Court in *Schneiderman* noted that one of the two fundamental contentions made by respondent was that petitioner "believed in and advocated the overthrow by force and violence of the Government, Constitution and laws of the United States." 320 U.S. 118, 135. "The Government contends that petitioner was not attached because he believed in the use of force and violence instead of peaceful democratic methods to achieve his desires . . . the Government admits the presence of sharply conflicting views on the issue of force and violence as a Party principle, and it also concedes that 'some communist literature in respect of force and violence is suspectible

of an interpretation more rhetorical than literal'. It insists, however, that excerpts from the documents on which it particularly relies, are enough to show that the trial court's finding that the Communist Party advocated violent overthrow of the Government was not 'clearly erroneous'." 320 U.S. 118, 146, 148.

Upon review of the Marxist-Leninist literature introduced into the record, the constitution of the Party, the testimony of the witnesses for respondent and the testimony of petitioner and his witnesses, this Court found that "a tenable conclusion from the foregoing is that the Party in 1927 desired to achieve its purpose by peaceful and democratic means, and as a theoretical matter justified the use of force and violence only as a method of preventing an attempted forcible counter-overthrow once the Party had obtained control in a peaceful manner, or as a method of last resort to enforce the majority will if at some indefinite future time because of peculiar circumstances constitutional or peaceful channels were no longer open." 320 U.S. 118, 157. The Court held further that the respondent had not carried its burden of proving the unlawful knowledge and intent of petitioner. "We hold only that where two interpretations of an organization's program are possible, the one reprehensible and a bar to naturalization and the other permissible, a court in a denaturalization proceeding, assuming that it can re-examine a finding of attachment upon a charge of illegal procurement, is not justified in canceling a certificate of citizenship by imputing the reprehensible interpretation to a member of the organization in the absence of overt acts indicating that such was his interpretation.

So uncertain a chain of proof does not add up to the requisite 'clear, unequivocal, and convincing' evidence for setting aside a naturalization decree." 320 U.S. 118, 158.

As has been indicated, following the reversal of the judgment in *Schneiderman* by this Court, mandates issued from this Court and the Court of Appeals which were finally spread on the minutes of the District Court. On August 30, 1943, the naturalization certificate previously surrendered by order of the Court was returned to petitioner. The issues were therefore finally adjudicated by this Court and so accepted by respondent. The principles of res judicata and collateral estoppel became applicable thereafter. *Duncan v. Gegan*, 101 U.S. 810; *Southern Pac. R. Co. v. United States*, 168 U.S. 1; *Kannel v. Kennedy*, 94 F. 2d 487 (C.A. 3, 1937); *Sewerage Comm. of City of Milwaukee v. Activated Sludge*, 81 F. 2d 22 (C.A. 7, 1936); *Larkin Automotive Parts Co. v. Bassick Mfg. Co.*, 19 F. 2d 944 (C.A. 7, 1927).

In the instant case, the form of the action was "conspiracy." The issues drawn by the indictment and plea of the petitioner were, however, in essential aspects identical. The objects of the conspiracy were "advocating and teaching the duty and necessity of overthrowing the Government of the United States by force and violence," and "organizing, and helping to organize, as the Communist Party of the United of America a society, group and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence." It was alleged that it was "a part of said conspiracy" that petitioner and the others would teach and advocate "the principles of Marxism-

Leninism" equated with the duty and necessity of forcibly overthrowing the Government. It was alleged that petitioner wilfully and knowingly conspired to commit the aforesaid offenses. The issue thus drawn required proof that petitioner knew and intended to advocate and teach the forcible overthrow of the Government and knew and intended to use the Party as a vehicle for such advocacy and teaching. In addition, the indictment charged a specific intent to forcibly overthrow the Government as speedily as circumstances would permit.

The evidence introduced by respondent in support of the indictment followed closely the lines of proof adopted in *Schneiderman.* Again, as has been noted, the same basic Marxist-Leninst documents were introduced into evidence, and the same and similar excerpts read therefrom into the record. Again, the membership and officership of the petitioner in the Party from the inception thereof was put into evidence. Again proof was introduced that the Party has continuously from its organization in the early 1900's advocated and taught the principles of Marxism-Leninism. The jury were so instructed as to permit a verdict of guilt to be returned against petitioner on the following theory adopted by both respondent and the trial judge and approved by the Court of Appeals (See R. 9987-88; App. Item 4, pp. 82-83; 106 F. Supp. 906, 921-923; summations of respondent, R. 12592 et seq.): The jury could find that there is only one interpretation of the principles of Marxism-Leninism, to-wit, advocacy and teaching of the overthrow of the Government of the United States by force and violence, such advocacy and teaching having been continuously in

existence since at least the publication of the Communist Manifesto in 1848 written by Marx and Engels and the later writings since the beginning of the nineteenth century of Lenin and Stalin. The Communist Party, since its inception in 1919, has advocated and taught the principles of Marxism-Leninism; the Party has therefore always advocated and taught the forcible overthrow of the Government. The petitioner joined the Party on or about 1922 knowing that the Party advocated and taught the principles of Marxism-Leninism and remained a member continuously thereafter occupying leading positions in the Party and participating in its activities; the jury could therefore infer that petitioner knew and intended from the beginning of his membership in the Party to advocate and teach the forcible overthrow of the Government and to actually overthrow the Government by force as speedily as circumstances permit, and that with such knowledge and intent petitioner joined the conspiracy alleged in the indictment—a conspiracy which respondent contended at the trial had existed at least from the time of the organization of the Party.

3. On this state of the record, the trial judge, as has been shown, excluded all questions of res judicata and collateral estoppel from the case. The trial judge made no ruling, and gave the jury no instructions, that as between the respondent and petitioner it had been finally determined that a tenable conclusion is that the principles of Marxism-Leninism do not advocate and teach the forcible overthrow of the Government; that the advocacy and teaching of the principles of Marxism-Leninism by the Party are not equivalent to the advocacy and teaching

of the forcible overthrow of the Government; that in the absence of clear, convincing and unequivocal proof of overt acts showing that petitioner had adopted a reprehensible interpretation of the principles of Marxism-Leninism and the programs and policies of the Party, the jury could not infer that petitioner knew that the Party by its advocacy and teaching of such principles taught and advocated the forcible overthrow of the Government or that petitioner so intended to teach and advocate with the intent to forcibly overthrow the Government as soon as circumstances permit.

If it be argued by respondent that the jury could have disregarded all of the aforesaid and convicted petitioner under this indictment solely on the "additional" evidence adduced herein, the answer is two-fold. In the first place, this Court is in no position now, it is respectfully submitted, to determine on what evidence the general verdict of the jury was based. *Stromberg v. California,* 283 U.S. 359, 367-8. The jury could have convicted petitioner on facts inconsistent with the facts as previously adjudicated. See, *Local 167, International Brotherhood of Teamsters v. United States,* 291 U.S. 293; *Washington Gaslight Co. v. District of Columbia,* 161 U.S. 316. Moreover, it is settled that basic factual determinations subject to the doctrines of res judicata and collateral estoppel cannot be litigated again by adding merely some additional proof in support of the same basic issue, or by adding some new elements to the charge, or by merely bringing forward some new witnesses. *Last Chance Mining Co. v. Tyler Mining Co.,* 157 U.S. 683, 691; *City of New Orleans v. Citizens Bank,* 167 U.S. 371, 396; *Sealfon*

v. United States, supra. In the second place, such evidence was palpably insufficient, certainly not "clear, convincing and unequivocal," either to sustain the conviction here or to controvert that petitioner, as in *Schneiderman,* did not intend to advocate and teach the forcible overthrow of the Government or to actually overthrow the Government, and that by his membership and officership in the Party, he did not understand the principles or programs of the Party, or the doctrines of Marxism-Leninism, to include the forcible overthrow of the Government. We do not repeat the discussion of the insufficiency of the evidence and the unlawful standards of proof adopted by the courts below as contained in the Yates petition. See, *De Jonge v. Oregon,* 299 U.S. 353; *Herndon v. Lowry,* 301 U.S. 242; *Schneiderman v. United States,* 320 U.S. 118; *Baumgartner v. United States,* 322 U.S. 665; *Hartzel v. United States,* 322 U.S. 680.

In addition, it must be noted that the respondent relied here upon evidence that preceded the years 1927. It stressed (1) that the principles of Marxism-Leninism were the same from 1848; it stressed that the Party advocated the unlawful doctrines from its inception in 1919; it stressed that petitioner's unlawful knowledge and intent were contemperaneous with his joining the Party on or about 1922. The duty of the trial judge to instruct the jury that these issues, even if considered only evidentiary or intermediate questions, had actually been decided in the prior litigation adverse to respondent, was plain. *United States v. B. & O. R.R. Co.,* 229 U.S. 244; *Sealfon v. United States,* supra. The duty of the trial judge was to instruct the jury that the issue of the

knowledge and intent of petitioner had been adjudicated adverse to the respondent at the very least up to the year 1927; that a lawful intent once established is presumed to continue (*Wolf v. United States,* 259 Fed. 388; 393 (C.A. 8, 1919); *Kammann v. United States,* 259 Fed. 192, 194 (C.A. 7, 1919)); and that the burden rested upon respondent to prove by clear, convincing and unequivocal evidence and beyond a reasonable doubt that the lawful intent previously adjudicated had turned into the specific criminal intent alleged in the indictment. By the exclusion of the entire question of res judicata and collateral estoppel from the case at all stages, the trial judge, sustained by the Court of Appeals, made any consideration of the prior litigation by the Court or the jury entirely impossible.

The question involved herein is one of great importance in the administration of criminal justice in the federal courts. This Court has stated that the principles of res judicata and collateral estoppel are "essential to the maintenance of social order." *So. Pac. Co. v. United States,* 168 U.S. 1, 49. And, in this connection, this Court has also stated: "It cannot be that the safeguards of the person, so often and so rightfully mentioned with solemn reverence, are less than those that protect from a liability in debt." *United States v. Oppenheimer,* 242 U.S. 85, 87.

CONCLUSION.

The petition for writ of certiorari should be granted, and the judgment of conviction reversed with directions to the District Court to grant petitioner's motion for judgment of acquittal.

Dated, August 8, 1955.

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